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WHEREFORE, the instant petition is Dismissed for lack of merit.

SO ORDERED

Gutierrez, Jr., Davide, Jr., and *Romero, JJ.*, concur.

Fernan, C.J., on leave.

THIRD DIVISION

[G.R. No. 50685. December 4, 1991]

ROBERTO AGURA, CESAR ALIB, TOMAS STA. RITA, ALFREDO CORDOVA, VICTOR DE LOS REYES, and MARINA SERFINO, *petitioners, vs.* **FEDERICO SERFINO, SR., FEDERICO SERFINO, JR., The Honorable RONALDO B. ZAMORA, Presidential Assistant for Legal Affairs, Office of the Department of Natural Resources, and The Court of First Instance of Manila, Branch XXI,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; SECRETARY OF AGRICULTURE AND COMMERCE (NATURAL RESOURCES); NATURE OF POWERS GRANTED THERETO. —** We enunciated in *Pajo, et al. vs. Ago, et al.* thus: "In the case of *Espinosa, et al., vs. Makalintal, et al.*, we held that the powers granted to the Secretary of Agriculture and Commerce (Natural Resources) by law regarding the disposition of public lands such as granting of licenses, permits, leases, and contracts or approving, rejecting, reinstating, or cancelling applications, or deciding conflicting applications, are all executive and administrative in nature.

2. **ID.; ID.; ID.; DECISION THEREOF WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; AS A GENERAL RULE, NOT DISTURBED BY COURTS; EXCEPTION. —** It is a

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well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts. In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. Findings of fact by an administrative board or officials, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. And we have repeatedly held that there is grave abuse of discretion justifying the issuance of the writ of certiorari only when there is capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law."

3. CIVIL LAW; PUBLIC LAND ACT (C.A. NO. 141); SECTIONS 61 AND 67 THEREOF, NOT REPEALED BY R.A. 730. — We agree with the ruling of the respondent court that R.A. No. 730 does not repeal or amend Sections 61 and 67 of C.A. No. 141 (The Public Land Act); it merely established an exception to said sections. From the title alone of R.A. No. 730 ("An Act to Permit The Sale Without Public Auction of Public Lands Of The Philippines For Residential Purposes To Qualified Applicants Under Certain Conditions.") it is quite obvious that indeed, as seen by the respondent court, it merely provides an exception to Sections 61 and 67 of C.A. No. 141. In short, R.A. No. 730 authorizes a sale by private sale, as an exception to the general rule that it should be by bidding, if the area applied for does not exceed 1,000 square meters, and that the applicant has in his favor the conditions specified for in Section 1 thereof. Hence, if the area applied for is in excess of 1,000 square meters, as in the instant case, the sale must be done only through bidding.

APPEARANCES OF COUNSEL

Francisco B. Cruz and Gruba, Tanlimco, Lamson & Burgos for petitioners.

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D E C I S I O N

DAVIDE, JR., *J.*:

In this petition for review on *certiorari*, petitioners seek to nullify the decision dated 30 April 1979 of the then Court of First Instance (now Regional Trial Court) of Manila, Branch XXI, in Civil Case No. 113897, which affirmed the decisions of the Presidential Assistant for Legal Affairs and the then Minister of Natural Resources giving due course to the Miscellaneous Sales Applications filed by private respondents with the Bureau of Lands.

The relevant factual and procedural antecedents which gave rise to this petition as gathered from the pleadings are as follows:

On 10 December 1965, private respondent Federico Serfino, Sr., filed with the Bureau of Lands Miscellaneous Sales Application (MSA) No. (V-3)2 over a 4,172 square meter parcel of land located at San Patricio, Bacolod City. On 18 February 1966, his son, respondent Serfino, Jr., filed MSA No. (V-3)1 over an adjoining lot with an area of 1,358 square meters. Subsequently, the Director of Lands approved the survey plans of these two (2) MSAs.

On 21 February 1966, Land Investigator Rodolfo Magbanua conducted a preliminary investigation of the parcels of land covered by the above MSAs. He reported that Serfino, Sr. had introduced improvements consisting of a residential house, a piggery house and a bodega all valued at ₱25,500.00; Serfino, Jr. had introduced an improvement consisting of a residential house valued at ₱15,000.00; and that they have been occupying the parcels applied for since 1947. Magbanua recommended that the MSAs be given further due course.

The MSAs were referred to the Director of Public Works, the Commissioner of Public Highways, the Bacolod City Engineer and the Bacolod City Collector of Customs. These officials did not interpose any objections.

The Director of Lands approved the surveys of the parcels applied for on 26 July 1966.

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On 28 September 1967, notices for the sale through public auction of the lots in question were posted at the required places and published in the 13 and 20 November 1967 issues of the Official Gazette. The auction sale was set for 27 December 1967 at 10:00 o'clock in the morning. The Undersecretary of Natural Resources pegged the price of the lots in question at ₱5.00 per square meter.

At the auction sale, private respondents were the only qualified bidders. Serfino, Sr.'s bid was ₱20,860.00 while that of Serfino, Jr.'s was ₱6,790.00. They paid the required 10% of their respective bids. While the purchase price and the corresponding annual real estate taxes have already been fully paid, the Bureau of Lands has yet to issue an Order awarding the lots in question to them.

On 11 March 1968, District Land Officer Pedro C. Reyes ordered an investigation of an alleged conflict (docketed as D.L.O. Conflict No. (V-3)220 (N)) between Serfino, Sr.'s MSA No. (V3)2 and that of an unnumbered Revocable Permit Application (RPA) of a certain Primitivo Donozo. On 2 April 1968, another investigation of an alleged conflict (docketed as B.L. Conflict No. 217(N)) between Serfino, Jr.'s MSA No. (V-3)1 and the RPAs of petitioners Agura, Alib, and Sta. Rita and a certain Domingo Natividad was ordered.

Land Investigator Ernesto Siriban conducted a preliminary investigation of B.L. Conflict No. 21 7(N). In his report dated 20 April 1968, he stated:

"That the land subject hereof used to be foreshore but is now dry land and is being used for residential purposes by the party litigants and their respective tenants and relatives;

That upon verification of the premises, it was found out that the area applied for and occupied by the Applicants-Contestants are inside the area applied for and surveyed for the Applicant-Respondent x x x."[1]

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[1] *Rollo,* 143.

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In his report, Siriban made no mention of D.L.O. Conflict No. (V-3)220(N). He advised the contending parties in B.L. Conflict No. 217(N) to submit to a formal investigation so that their respective claims can be threshed out.

A formal investigation was then conducted by Ramon Villamarzo of the Bacolod City District Land Office. Three (3) formal hearings were held in May, June and 19 September 1969. Unfortunately, however, Villamarzo failed to submit either the stenographic notes or the report on what transpired during these hearings, except the one held on 19 September 1969 wherein he stated that for failure of herein respondents to appear, he had to reset the hearings of 27, 28, and 29 of November 1969.

Meanwhile, petitioners Agura, Alib, Sta. Rita and 106 others sent to the President of the Philippines a petition dated 22 August 1969 requesting that the small parcels of land located in the areas covered by private respondents' MSAs which they have been occupying for thirty (30) years be awarded to them. In view of this petition, Regional Land Officer Cipriano Zabala of Region V, Iloilo City was ordered to conduct an investigation.

On 13 October 1969, Zabala submitted the following preliminary report:

"The land subject of the present controversy is now a dry land which has been formed by accretions from the sea (Guimaras Strait) for many, many years. It could not be reached anymore by sea water during ordinary high tide. The land is between the Bacolod Cadastre on the east and foreshore area on the west.

About 3/4 of the land in question extending towards the south was surveyed under approved survey plans msi-(V-3)3-D in the name of Federico Serfino, Sr. and Serfino, Jr. The remaining 1/4 portion of the land in question is not covered by an approved survey plan and is being claimed by Mr. Serfino, Sr.

The Serfinos have houses on the land in question. Likewise, all other portions of the land in question are covered with houses mostly of nipa roofing and of light materials belonging to the petitioners. There is an artesian well now being used by the people therein. Several old coconut trees are found in the area and the consensus of the

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people with me (including Atty. Drilon, Jr., Serfino Sr. and Barrio Captain Deoma) is that these coconut trees have been planted by Candido Cordova and/or his predecessors, owners of a cadastral lot not very far south of the land in question."[2]

On 3 December 1969, Zabala submitted a "final" report:

"As stated in my progress report dated October 13, 1969, transit and stadia sketching of the area in question was made by Supervising Surveyor I Ponciano Bautista of the Bacolod City District Land Office. Enclosed herewith, marked as Annex 'J' is a sketch tracing plan prepared therefor. From the herein sketch plan, the first lot on the south is that covered by M.S.A. No. (V-3)1 of Federico Serfino, Jr. with an area of 1,358 square meters. There are thirty four (34) persons (petitioners) with houses therein very close to each other occupying the area. Some of these houses are indicated on the tracing plan. The site of the proposed artesian well to be constructed is also indicated and circled with red ink on the sketch.

The second lot involved in this case with an area of 4,172 square meters is the one applied for by Federico Serfino, Sr. Aside from the residential house of the Serfinos and the bodega (of) the West Visayan Shipping Co., there are thirty-eight (38) houses also close to each other of the petitioners. Some of these houses are indicated on the sketch.

x x x x x x x x x

The third lot on the north is not covered by any public land application by the Serfinos as verified from the records in the District Land Office at Bacolod City. The area is approximately 3,650 square meters. There are fifty-eight (58) houses of the petitioner(s) within the lot all close to each other. Some of the houses are indicated on the sketch. The site of another artesian well proposed to be constructed by the petitioners is marked and circled in red ink."[3]

Zabala likewise stated in his report that three (3) ejectment cases (Civil Cases Nos. 6533, 6534, and 6674) were filed with the City Court of Bacolod by private respondents against certain individuals including petitioners herein. He recommended that,

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[2] *Rollo,* 144.

[3] *Rollo,* 144-145.

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in view of these pending cases, further action on private respondents' MSAs be held in abeyance.

On 7 January 1970, the City Court of Bacolod rendered a decision in Civil Case No. 6533 ordering the ejectment of the defendants therein from the lots in question for "failure to pay rentals." On 22 August 1970, Civil Cases Nos. 6534 and 6674 were dismissed on the ground that "the question of who has a better right to the areas claimed by the parties will be determined by the Bureau of Lands who (sic) has charge of the disposal of public lands."[4]

On 10 February 1971, Land Investigator Villamarzo submitted a report recommending that the petitioners herein be given a preferential right" over the portions occupied by them. Acting on this recommendation, the Director of Lands on 6 July 1971 issued an Order, the dispositive part of which reads:

"WHEREFORE, it is ordered that the Miscellaneous Sales Applications No. (V-3)2 and (V-3)1 of Federico Serfino, & and Federico Serfino, Jr., respectively, be, as hereby they are, amended by excluding therefrom the portions occupied by the petitioners, and as thus amended said applications shall be given due course for the remaining portions after they are surveyed at the applicant's own expense. The excluded portions shall be subdivided into home-sized lots in accordance, as much as possible, with the actual occupation of the petitioners who shall, thereafter, be required to file appropriate public land applications therefor."[5]

On 7 August 1971, private respondents moved for a reconsideration alleging that they were not given the opportunity to introduce evidence in their behalf. On 16 August 1974, the Assistant Director of Lands denied the motion stating, *inter alia,* that:

"Records also disclosed that the proceedings in the City Court of Bacolod in the aforesaid civil cases were adopted during the investigation of the above-noted case conducted by a representative of this office. Thus, the records of the transcript of stenographic

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[4] *Id.,* 145-146.

[5] *Rollo,* 146.

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notes taken down during the hearing in the two (2) aforesaid civil cases are attached to the record of this case as part hereto.

Records further show that the petitioners-claimants are in actual possession of the portions respectively claimed by them. The foregoing facts and circumstances have clearly established that the petitioners-claimants have preferential right to the portions they actually occupy."[6]

On appeal by herein private respondents, the Secretary of Natural Resources set aside the foregoing orders in a decision dated 7 October 1976, the dispositive part of which reads:

"WHEREFORE, the Order of the Director of Lands dated July 6, 1971, is hereby SET ASIDE, and the appellees are hereby ordered to vacate the two lots in question within thirty (30) days from receipt of their copies of the decision hereof and leave the appellants in peaceful possession of the same. Accordingly, the Miscellaneous Sales Application No. (V-3)1 of appellant Federico Serfino, Jr. and Miscellaneous Sales Application No. (V-3)2 of appellant Federico Serfino, Sr. shall be given further due course."[7]

In support of this disposition, the Secretary made the following findings of facts and conclusions:

"The principal issue is whether or not the sales of the lots in question in favor of the appellants (private respondents) should be revoked in view of the alleged conflicts and adverse claims of the appellees (petitioners).

We find no basis for an affirmative answer to this issue considering that the basic facts remain uncontroverted.

The records show that the required notices were posted in accordance with law on September 28, 1967, at the required places for the sale through public auction of the lots in question on December 27, 1967. The notices were likewise published in the Official Gazette on November 13, 1967, and on November 20, 1967. On December 27, 1967, no other bids having been admitted, except those of the appellants, their bids were accepted. Since then, the appellants have fully paid the amounts respectively bidded by them: ₱20,860.00 for

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[6] *Rollo,* 146-147.

[7] *Id,* 147.

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Federico Serfino, Sr., and ₱6,790.00 for Federico Serfino, Jr. Appellants have also declared the said lots for taxation purposes with the City Assessor of Bacolod and have been religiously paying their taxes thereon.

Ordinarily, the Order of award and the corresponding authority to enter follow. But no such order of award in favor of the appellants has yet been issued. Were there supervening events that could have prevented the Bureau from giving the award to the appellants? If so, did these supervening events constitute a bar to an award of the contested lots?

From the records of this case, there were allegedly two supervening events. First, there were the alleged conflicts between the Miscellaneous Sales Applications of the appellants and Revocable Permit Applications of the five appellees. The second were the adverse claims of these five appellees and 105 others filed on August 22, 1969.

Under Land Administrative Order No. 6, a conflict refers to a protest made by a public land applicant who believes that another applicant or any other person is encroaching upon the land applied for by him. In other words, it is essential that the protestant must be a public land applicant. Appellees never filed any regular land application. They did, however, file revocable permit applications, but these were never approved by the Bureau of Lands as reflected in the questioned Order of the Director of Lands x x x The appellees therefore have not acquired any right whatsoever over the lots in question. Beside (sic) such mere filing did not create an obligation on the part of the Bureau of Lands to grant their applications. x x x It is discretionary on the part of said officials to grant or not to grant such applicants.' (*Aureus vs. Secretary of Agriculture and Natural Resources*, 85 Phil. 1, November 11, 1949).

The case took on a different aspect when the five appellees and 105 others sent a letter-protest to the President of the Philippines on August 22, 1969, requesting that the contested areas, which they have allegedly occupied for more than thirty (30) years, be awarded to them. This was done even while the formal investigation before Villamarzo on the alleged conflicts was still pending. In fact, no investigation at all was ever done by Villamarzo. In effect, the appellees turned the alleged conflicts into adverse claims.

Again under Lands Administrative Order No. 6, an adverse claim refers to the verified protest filed whereby a person asserts a right

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over a land covered by a public land application, based on his alleged ownership or on his prior right to apply for the same.

Obviously, appellees cannot base their adverse claim on the ground of ownership since the contested lots belong to the public domain. Well settled is the rule that no public land can be acquired by private persons without a grant, excess or implied, from the Government (*Padilla vs. Reyes*, 60 Phil. 967), x x x However, a mere allegation by the appellees that they have been in occupation of certain portions of the public domain for more than 30 years is not sufficient to confer ownership on (sic) said public lands.

x x x x x x x x x

Appellees herein failed to protest when the appellants filed their respective sales applications. Neither did they protest when the land was surveyed nor did they contest or participate in the public bidding. Appellees took nearly two years after the bidding to file their alleged adverse claims.

x x x x x x x x x

The basic facts remain. The Bureau decided to sell the contested lots through public auction. And the public bidding was indeed held. Prior possession is immaterial. In proceedings for the sale of public lands for residential purposes, adjudication shall be made to the highest bidder. x x x

Appellants herein have substantially complied with the sales provisions of the Public Land Act, whereas the appellees failed to exercise their rights when they did not participate in the public bidding. They therefore could not involve preferential right over the contested lots under Section 95 of the Public Land Act since the lots were already regularly sold at public auction in favor of the appellants."[8]

On appeal by herein petitioners, the Presidential Assistant for Legal Affairs on 20 September 1977 affirmed *in toto* the foregoing decision.

In affirming the Secretary's decision, the Office of the President held as without merit the contentions of petitioners that the land in question is foreshore and cannot therefore be

[8] *Rollo*, 59-64.

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disposed of by sale but only by lease pursuant to Section 61, in relation to Section 59 of the Public Land Act, and that if at all it could be disposed of by sale, purchasers are limited to 1,000 square meters pursuant to R.A. No. 730, and that the decision appealed from renders nugatory the social justice policy of the New Society as it would result in the eviction and dislocation of more than 100 occupants of the area who have been there for more than thirty (30) years. The order of the Director of Lands of 6 July 1971 favoring the petitioners characterized the land as having been formed by accretion from the sea, hence it is not foreshore land. The sales in question were perfected by public auction, held and conducted pursuant to Section 60, in relation to Section 26 of the Public Land Act, and not through private sales; hence, R.A. No. 730 has no application. As to the third contention, the Office of the President concluded that from the facts established, the petitioners were able to enter the land after the Serfinos purchased the land by public bidding. The social justice policy of the New Society does not condone, much less countenance, entry upon public lands already applied for and purchased at public auction; otherwise, it would be placing a premium on squatting.[9]

Petitioners' motion for reconsideration of the above decision having been denied, they filed with the respondent trial court a special civil action for *certiorari* and asked for the nullification of the decisions of the Presidential Assistant for Legal Affairs and the Secretary of Natural Resources. On 30 April 1979, the trial court[10] affirmed the questioned decisions and dismissed the petition.[11]

On 20 July 1979, petitioners filed the petition at bar.[12]

Petitioners urge Us to reverse the decision of the trial court because it erred:

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[9] *Rollo*, 90-92.

[10] Per Judge Jose C. Colayco.

[11] *Rollo*, 141-155.

[12] *Id.*, 8-35.

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"I

X X X IN NOT DECLARING THAT THE FINDINGS OF THE RESPONDENTS PUBLIC OFFICIALS WERE MADE WITH ARBITRARINESS AND WITH GRAVE ABUSE OF DISCRETION.

II

X X X IN REFUSING TO REVIEW, AND IN BASING ITS DECISION ON, THE FINDINGS OF FACT OF THE RESPONDENT PUBLIC OFFICIALS.

III

X X X IN NOT HOLDING THAT SEC. 1 OF R.A. NO. 730 HAS AMENDED THE PROVISIONS OF SECS. 61 AND 67 OF THE PUBLIC LAND ACT REGARDING THE SALE OF PUBLIC LANDS FOR RESIDENTIAL PURPOSES TO *BONA FIDE* OCCUPANTS.

IV

X X X IN NOT HOLDING THAT THE SALE TO THE RESPONDENTS SERFINOS AT PUBLIC AUCTION OF MORE THAN 1,000 SQUARE METERS OF RESIDENTIAL PUBLIC LAND VIOLATED THE PROVISIONS OF R.A. NO. 730 AND IS THEREFORE VOID."

We required the respondents to comment[13] on the petition which public respondents complied with on 31 August 1979,[14] and private respondents on 12 October 1979.[15] A Reply was subsequently filed by the petitioners. On 13 February 1980, this Court gave due course to the petition[16] and the parties consequently filed their Briefs.

The petition is devoid of merit.

Decisive of the first and second assigned errors is the rule We enunciated in *Pajo, et al. vs. Ago, et al.*,[17] thus:

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[13] *Rollo*, 157.

[14] *Id.*, 161.

[15] *Id.*, 177.

[16] *Id.*, 217.

[17] 108 Phil. 905 (1960).

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"In the case of *Espinosa, et al. vs. Makalintal, et al.* [79 Phil. 134; 45 Off. Gaz. 712] we held that the powers granted to the Secretary of Agriculture and Commerce (Natural Resources) by law regarding the disposition of public lands such as granting of licenses, permits, leases, and contracts or approving, rejecting, reinstating, or cancelling applications, or deciding conflicting applications, are all executive and administrative in nature. It is a well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts [*Coloso vs. Board of Accountancy*, 92 Phil. 938 and cases therein cited]. In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact [54 Am. Jur. 558-559]. Findings of fact by an administrative board or officials, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. And we have repeatedly held that there is grave abuse of discretion justifying the issuance of the writ of *certiorari* only when there is capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction [*Abad Santos vs. Province of Tarlac*, 67 Phil. 480; *Tan vs. People*, 88 Phil. 609], as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law [*Tavera-Luna, Inc. vs. Nable*, 67 Phil. 340; *Alafriz vs. Nable*, 72 Phil. 278; *Liwanag vs. Castillo*, 106 Phil. 375; 57 Off. Gaz. [11] (1962)]." x x x

and reiterated in many cases, among which is *Lacuesta vs. Herrera*.[18]

In *Lacuesta vs. Herrera*, this Court categorically declared:

"The petition must therefore be granted on the strength of the established doctrine that where as in this case at bar there is no showing that there was fraud, collusion, arbitrariness, illegality,

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[18] 62 SCRA 115 (1975). The others are *Ganitano vs. Secretary of Agriculture and Natural Resources, et al.*, 16 SCRA 543 (1966); *Deluao, et al. vs. Casteel*, 26 SCRA 475 (1968); *Lim vs. Secretary of Agriculture and Natural Resources*, 34 SCRA 751 (1970).

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imposition or mistake on the part of the Office of the President or a department head, (such as the Secretary of Agriculture and Natural Resources in the present case), in rendering their questioned decisions or of a total lack of substantial evidence to support the same, such administrative decisions are entitled to great weight and respect and will not be interfered with by the courts."

In the instant case, both the Secretary of Natural Resources and the Office of the President made a thorough and painstaking analysis and evaluation of the facts and their respective decisions are clearly supported by substantial evidence. There is nothing in their actuations that would bring their findings and decisions within the above exceptions to the principle of conclusiveness of finding of facts of administrative bodies. Accordingly, the trial court, which nevertheless patiently and carefully summarized the facts, did not commit the first and second alleged errors.

The third and fourth assigned errors are likewise untenable.

We agree with the ruling of the respondent court that R.A. No. 730 does not repeal or amend Sections 61 and 67 of C.A. No. 141 (The Public Land Act); it merely establishes an exception to said sections.

Section 61 of the Public Land Act provides:

"The lands comprised in classes (a), (b), and (c) of section fifty-nine shall be disposed of to private parties by lease only and not otherwise, as soon as the President, upon recommendation by the Secretary of Agriculture, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act."

Section 67 provides:

"The lease or sale shall be made through oral bidding, and adjudication shall be made to the highest bidder. However, where an applicant has made improvements on the land by virtue of a permit issued to him by competent authority, the sale or lease shall be made by sealed bidding as prescribed in section twenty-six of this Act, the provisions of which shall be applied wherever applicable. If all or part of the lots remain in unleased or unsold, the Director of Lands shall from time to time announce in the Official Gazette or

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in any other newspapers of general circulation, the lease or sale of those lots if necessary."

Section 59 reads:

"The lands disposable under this title shall be classified as follows:

a) Lands reclaimed by the Government by dredging, filling, or other means;

b) Foreshore;

c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;

d) Lands not included in any of the foregoing classes."

The land in question belongs to class (d).

On the other hand, Section 1 of Republic Act No. 730 ("An Act To Permit The Sale Without Public Auction of Public Lands Of The Republic Of The Philippines For Residential Purposes To Qualified Applicants Under Certain Conditions") provides that:

"Notwithstanding the provisions of sections sixty-one and sixty seven of Commonwealth Act Numbered One Hundred Forty-one, as amended by Republic Act Numbered Two Hundred Ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of the Lands with approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupant has constructed his house on the land and actually resided therein. Ten percent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments."

while Section 3 reads:

"The provisions of the Public Land Act with respect to the sale of lands for residential purposes which are not inconsistent herewith shall be applicable."

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From the title alone of R.A. No. 730, it is quite obvious that indeed, as seen by the respondent court, it merely provides an exception to Sections 61 and 67 of C.A No. 141. We quote with approval the pertinent portions of the disquisition of the respondent court, thus:

"The contention of the petitioners that the sale to the Serfinos is void because under Rep. Act No. 730 public lands for residential purposes must be sold by private sale and for not more than 1,000 square meters is not meritorious either. Sec. 59 of Commonwealth Act No. 141 has classified public lands which can be sold for residential, commercial, or industrial purposes into: (a) lands reclaimed by the government; (b) foreshore; (c) marshy lands; and (d) lands not included in any of the foregoing classes. Under Sec. 60 of the Act, these public lands may be leased or sold to any person qualified to purchase public lands for agricultural purposes, provided that the area shall not exceed 144 hectares, as may be determined by the Secretary of Agriculture and Natural Resources. Under Sec. 61, the lands under (a), (b) and (c) classifications can be disposed of by lease only, while those under (d) classification may either be leased or sold, Sec. 67 provides that the lease or sale shall be made by oral bidding to the highest bidder. Secs. 61 and 67 of Commonwealth Act No. 141 were amended by Rep. Act No. 730 in the following manner:

x x x x x x x x x

The petitioners contend that after the passage of Rep. Act No. 730, the sale of public lands for residential purposes has been limited to 1,000 square meters only, and that the sale must be effected by private sale only. A close examination of the law cited by the petitioners, however, shows that it is only applicable when the conditions specified therein are present, *i.e.*, that preference shall be given to the applicant if he is not the owner of a home lot in the municipality or city in which he resides; if he has established his residence in good faith on a parcel of public land, which is not needed for the public services; and if the area applied for does not exceed one thousand square meters. In other words, Sec. 1 of Rep. Act No. 730 does not repeal Secs. 61 and 67 of Commonwealth Act No. 141 entirely, but merely establishes an exception. It does not repeal Sec. 60, either expressly or by implication."

x x x x x x x x x

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In short, R.A. No. 730 authorizes a sale by *private sale,* as an exception to the general rule that it should be by *bidding,* if the area applied for does not exceed 1,000 square meters, and that the applicant has in his favor the conditions specified for in Section 1 thereof. Hence, if the area applied for is in excess of 1,000 square meters, as in the instant case, the sale must be done only through bidding.

WHEREFORE, the *instant petition* is *DISMISSED* and the *decision of the respondent court of 30 April 1979 in Civil Case No. 113897* is *AFFIRMED,* with *costs against petitioners.*

IT IS SO ORDERED.

Gutierrez, Jr., Bidin, and *Romero, JJ.,* concur.

Fernan, C.J., on leave.

THIRD DIVISION

[G.R. No. 81239. December 4, 1991]

NELSON L. YOUNG and VIOLETA YOUNG, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS and INDUSTRIAL FINANCE CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PARTIES MAY AGREE TO HOLD A SECOND PRE-TRIAL; INSTANT CASE IS DIFFERENT FROM PIONEER AND DBP CASES. — No one can question the soundness and wisdom of the doctrine that the pre-trial stage is completed after a party had been ordered non-suited or declared as in default, as the case may be, and that an order lifting it does not revert the action to its pre-trial stage, or authorize, much less, a second pre-trial. However, neither the Rules nor the doctrine bars the